

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ROGER GENE OTTO,

Petitioner,

v.

MAGGIE MILLER-STOUT,

Respondent.

Case No. C07-5452RJB

ORDER DENYING
APPLICATION FOR
CERTIFICATE OF
APPEALABILITY

This matter comes before the court on petitioner's Application for Certificate of Appealability.
Dkt. 4. The court has considered the relevant documents and the remainder of the file herein.

On August 27, 2007, petitioner filed a petition for writ of habeas corpus (Dkt. 1), an application to proceed *in forma pauperis* (Dkt. 2), and an application for a Certificate of Appealability (Dkt. 4). On September 4, 2007, U.S. Magistrate J. Kelley Arnold filed a Report and Recommendation, recommending that petitioner's application to proceed *in forma pauperis* be denied because petitioner has sufficient funds to pay the \$5 filing fee; the Report and Recommendation is noted for consideration on the court's September 28, 2007 calendar. Dkt. 7.

Before the court is petitioner's application for a Certificate of Appealability. Dkt. 4. Under 28 U.S.C. § 2253(a), in a habeas corpus proceeding, the final order shall be subject to review, on appeal, by the court of appeals for the circuit in which the proceeding is held. Unless a circuit justice or judge issues a Certificate of Appealability, an appeal may not be taken to the court of appeals from the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State


1 court. 28 U.S.C. § 2253(c)(1). A final appealable order has not been issued in this case. A Certificate of
2 Appealability may only be issued after petitioner has filed an appeal from a final order. Petitioner's request
3 for a Certificate of Appealability is premature and should be denied without prejudice.

4 Therefore, it is hereby

5 **ORDERED** that petitioner's Application for Certificate of Appealability (Dkt. 4) is **DENIED**
6 without prejudice.

7 The Clerk is directed to send uncertified copies of this Order to all counsel of record and to any
8 party appearing *pro se* at said party's last known address.

9 Dated this 14th day of September, 2007.

10 
11 ROBERT J. BRYAN
12 United States District Judge